

C.W.P No.5495 of 2012

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. C.W.P No.5495 of 2012

Sham Lal and othersPetitioners

Versus

State of Punjab and othersRespondents

2. C.W.P No. 8744 of 2012

Amarjit Singh and othersPetitioners

Versus

State of Punjab and othersRespondents

3. C.W.P No. 25137 of 2012

Kewal Rai and othersPetitioners

Versus

State of Punjab and othersRespondents

DATE OF DECISION: 17.8.2016

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Yogesh Putney, Advocate
for petitioners in C.W.P. No. 5495 of 2012.

Mr. S.S. Rana, Advocate
for petitioners in C.W.P. No. 8744 of 2012.

Mr. Arvind Singh, Advocate
for petitioners in C.W.P. No. 25137 of 2012.

Mr. L.S. Virk, Addl. A.G., Punjab.

DAYA CHAUDHARY, J.

This judgment of mine shall dispose of three petitions bearing Nos. 5495, 8744 and 25137 of 2012 as common question of law and facts are involved. However, for the sake of convenience, facts are being extracted from C.W.P. No. 5495 of 2012.

Briefly, the facts of the case as made out in the present petition are that the petitioners were initially appointed as Charge man on work charge basis and thereafter were promoted as Dragline Operator on work charge basis and were regularized subsequently. After coming into operation of the 2nd Pay Commission Report, the petitioners were not given the revised pay scale of ₹ 510-940 and were getting pay scale of Operators only, whereas, they were entitled for the pay scale granted to Dragline Operators. Thereafter, the Punjab Government set-up 3rd Pay Commission for recommending suitable revision of pay scales to its employees. The pay scale of the Dragline Operators was revised to ₹ 1350-2400 and of Operators to ₹ 1200-2100 but the petitioners were granted pay scale of Operators only and not of Dragline Operators, whereas, they were performing duties of Dragline Operators. Aggrieved by the action of the respondents, the petitioners made various representations but their request was not accepted. Ultimately, being satisfied with the cause, the case of the petitioners was recommended by respondent No.6 vide letter dated 28.4.1991, wherein, it was mentioned that the petitioners were working as Dragline Operators and were entitled to the pay scale of ₹ 1350-2400 but in spite of that recommendation, their claim was rejected vide order dated 14.12.2011.

The challenge in the present petition is for quashing of

impugned order dated 14.12.2011, whereby, claim of the petitioners for grant of revised pay scale at par with their counter-parts has been rejected inspite of specific recommendations made by the authorities. A further prayer has also been made for issuing directions to the respondents to grant pay scale of Dragline Operators revised from time to time along with arrears and interest as well.

Learned counsel for the petitioners contends that the petitioners except petitioners No. 18 to 21 filed C.W.P. No. 16007 of 1993 for grant of revised pay scale, which was disposed of with a direction to the respondents to decide the claim of the petitioners on the basis of recommendation made by the concerned authorities but their claim was rejected vide order dated 14.12.2011. Learned counsel further contends that the case of the petitioners is squarely covered by the decision of Division Bench Judgment of this Court rendered in **Gurmit Singh Vs. State of Punjab** (LPA NO. 663 of 1993 decided on 5.12.2001), whereby, this Court directed the respondents to grant pay scale of Dragline Operators but still the claim of the petitioners has been rejected without taking into consideration the aforesaid decision by mentioning that the entries were not made in the service book. Learned counsel also contends that the claim of the petitioners has been rejected without any application of mind and without giving any specific finding and as such the action of the respondents is not only illegal but arbitrary as well. It is also the contention of learned counsel that the petitioners are entitled to pay scales, which have been given to their counter-parts under the principle of 'Equal Pay for Equal Work' as enshrined under Article 39 (d) of the Constitution of India. Lastly, learned counsel for the petitioners submits that the petitioners are performing duties of the posts

of Dragline Operators and are entitled to the pay scales of the said post.

Learned counsel for the respondents opposes the submissions made by learned counsel for the petitioners on the ground that a speaking order has been passed while declining the claim of the petitioners and it cannot be said that the order is non-speaking. Learned counsel further contends that the petitioners were never appointed on the post of Dragline Operators and they were working as Operators only. The post of Dragline Operator is a higher post and, therefore, the petitioners are not entitled for the pay scale of Dragline Operators when they are appointed as Operators. No similarly situated employee has been granted the pay scale equivalent to Dragline Operators. The cadre of Operators is controlled at the circle level under Superintending Engineer, where there is only one Mechanical Drainage Construction Division, Ferozepur Division, Ferozepur and no sanctioned post of Dragline Operator is there. It is also the contention of learned State counsel that in the absence of sanctioned posts of Dragline Operators, the petitioners are not entitled for the pay scales of Dragline Operators. There is a difference in nature and responsibilities of both the posts. The petition is also barred by delay and laches as the petition was filed in the year 2005 and pay scale has been claimed w.e.f. 1978 and even some of the petitioners have already retired.

Heard the arguments advanced by learned counsel for both the parties and have also perused the impugned order and other documents available on the file.

Admittedly, the petitioners filed C.W.P. No. 16007 of 1993, wherein, directions were issued by this Court to consider the claim of the petitioners by passing a speaking order. In pursuance to that direction, the

claim of the petitioners was rejected vide order dated 14.12.2011, which is subject matter of challenge in the present petition.

The stand of the petitioners is that they had been working on the post of Dragline Operators, whereas, they were being paid salary/pay-scale of Operators. The claim of the petitioners has been rejected on the ground that there is no sanctioned post of Dragline Operator and there is no document to show that they were working as Dragline Operators. As per rejection order, the petitioners were not appointed as Dragline Operators and were getting salary of the post on which they were appointed, which was also revised from time to time. Majority of the petitioners have retired and they were getting maximum pay in the pay scale of Operators.

During pendency of the present petition, an affidavit was filed by Deputy Secretary to Government of Punjab, Department of Irrigation, Punjab, wherein, it has been mentioned that the petitioners are having right to get their pay scale on the post they were appointed. Another affidavit of Under Secretary to Government of Punjab, Department of Irrigation, Punjab was filed on 8.7.2016, wherein, it was also mentioned that the petitioners never worked as Dragline Operators. They were appointed as Operators and subsequently were regularized while working in the office of Executive Engineer, Mechanical Drainage Construction Division, Ferozepur.

In the reply filed by Sh. Bhupindra Singh, Executive Engineer, Mechanical Dragline Construction Division, Ferozepur on behalf of respondents No.1 to 6, it has been mentioned that fixation of pay of various categories of employees is the prerogative of the pay commission. In para No. 17, it has been mentioned that inadvertently in service book Dragline Operator was mentioned instead of Operator, whereas, no post of Dragline

Operator was sanctioned. Neither any record of service including service book has been produced in Court by learned counsel for the respondents nor any document has been placed on record by learned counsel for the petitioners to the effect that the petitioners were working as Dragline Operators. The case of the petitioners is that they were appointed as Operators but have been discharging duties of Dragline Operators. The claim has been rejected on the ground that the petitioners never worked as Dragline Operators and no sanctioned post is there. A contradictory stand has been taken by the respondents in the written statement as well as in the affidavit filed during hearing of the case to the extent that entry in service book has wrongly been mentioned that the petitioners are working as Dragline Operators, whereas, no such post of Dragline Operator was sanctioned. Disputed questions of facts are there, which cannot be considered in the writ petition. The oral averments from both the sides cannot be considered without having any sufficient material on record. During arguments, learned counsel for the petitioners also submitted that the petitioners were issued identity cards of the post of Dragline Operators but the same cannot be accepted as no sanctioned post was there.

In view of the facts as mentioned above and by taking into consideration the submissions made by learned counsel for the parties, the impugned order dated 14.12.2011 is set aside and the respondents are directed to reconsider the case of the petitioners afresh after taking into account the service record as well as the documents like identity card relied upon by the petitioners. While deciding the claim of the petitioners, the decision of this Court in **Gurmit Singh's case (supra)** be also considered.

Necessary exercise be done within a period of four months from the date of

receipt of copy of the order. In case the petitioners are found to be entitled, the necessary relief be given to them within a period of three months thereafter.

In case, the personal hearing of the petitioners or their representative is necessary for decision of the case, the same be afforded to them. It is also expected that the respondent authorities would pass reasoned order as in the earlier order it has simply been mentioned that the petitioners were never appointed as Dragline Operators and were given pay scale of the post of Operators against which they were appointed.

In case the petitioners are still aggrieved, they are at liberty to avail the appropriate remedy.

17.8.2016
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes